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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN - 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Broadcast Signal Carriage Issues)

MM Docket No. 92-259

OPPOSITION OF BELL ATLANTIC¹
TO PETITION FOR RECONSIDERATION

The petition of the incumbent cable industry for reconsideration of the Commission's decision to prohibit exclusive retransmission consent agreements should be denied.²

The cable incumbents offer no reason that the Commission should do an abrupt about face on this issue, except to point out that the Commission's decision is not "compelled by the program access provisions of the Act."³ The Commission's Order, however, nowhere suggests that it is.

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies. The Diamond State

The cable incumbents do not argue that the Commission lacks statutory authority to bar exclusive retransmission consent agreements, nor could they reasonably do so. The Commission has broad authority to "establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent."⁴

Exercising this authority to prohibit exclusive arrangements for broadcast programming will promote competition and further Congressional intent. In fact, as the Commission found, the same concerns which led to enactment of the program access provisions counsel strongly in favor of prohibiting cable operators from entering into exclusive retransmission consent agreements.⁵ Congress itself recognized that the ability of competing multichannel providers to obtain access to programming is "crucial to the development of competition to cable,"⁶ and cable operators have historically used exclusive programming

⁴ See Cable Television Consumer Protection and Competition Act of 1992, § 6 ("1992 Cable Act").

⁵ Broadcast Signal Carriage Issues, MM Dkt No. 92-259, Report and Order at 97 (rel. Mar. 29, 1993).

⁶ S. Rep. No. 102-92, 102d Cong., 1st Sess. 77 (1991) ("Senate Report"); see also Development of Competition and Diversity in Video Programming Distribution and Carriage, MM Dkt No. 92-265, First Report and Order at 26 (rel. Apr. 30, 1993) ("Program Access Order") ("Cable systems have generally developed without effective competition and it is recognized that if 'facilities based' competition is to develop, access to programming is an essential prerequisite.").

contracts to impede the development of competition.⁷ Because consumers still spend a majority of their viewing time watching broadcast TV,⁸ these concerns apply with special force to broadcast programming.

Moreover, the very reason Congress concluded the must carry and retransmission consent provisions were necessary is the fact that cable's monopoly status has resulted in a scarcity of video distribution capacity. Eliminating barriers to entry by new facilities-based competitors such as exclusive programming arrangements will ultimately help to break cable's bottleneck and resolve the problem of distribution scarcity.⁹

In short, prohibiting exclusive retransmission consent agreements will further Congress's objective of promoting competition in the video marketplace.¹⁰ Consequently, the cable

⁷ Senate Report at 28 (cable operator's use exclusive contracts to "establish a barrier to entry and inhibit the development of competition in the market"); see also Program Access Order at 26 ("Congress has clearly placed a higher value on new competitive entry than on the continuation of exclusive distribution practices that impede this entry.").

⁸ Setzer & Levy, "Broadcast Television in a Multichannel Marketplace," OPP Working Paper No. 26 at 21 (June 1991); see also 1992 Cable Act, § 2(a)(19) ("broadcast programming that is carried remains the most popular programming on cable systems").

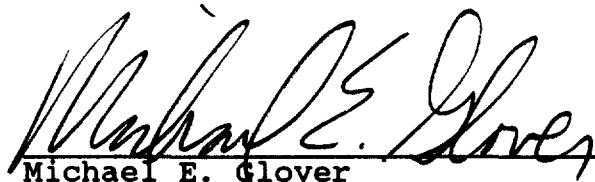
⁹ See H. Conf. Rep. No. 862, 102d Cong., 2d Sess. at 93 (1992) (directing the Commission to adopt rules to "encourage arrangements which promote the development of new technologies providing facilities-based competition to cable....").

¹⁰ See H.R. Rep. No. 628, 102d Cong., 2d Sess. at 44 ("steps must be taken to encourage the further development of robust competition in the video marketplace").

incumbents' petition for reconsideration on this issue should be denied.

Respectfully submitted,

Edward D. Young, III
John Thorne
Of Counsel

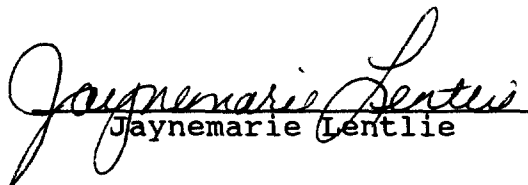

Michael E. Glover
1710 H Street, N.W.
Washington, D.C. 20006
(202) 392-1082

Attorney for the Bell Atlantic
Telephone Companies

June 7, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Opposition of Bell Atlantic to Petition for Reconsideration" was served this 7th day of June, 1993, by delivery thereof by first class mail, postage prepaid, to the parties on the attached list.


Jaynemarie Lentlie

Daniel L. Brenner
Michael S. Schooler
Diane B. Burstein
NCTA
1724 Massachusetts Ave., N.W.
Washington, D.C. 20036

Henry L. Baumann
Jack N. Goodman
Benjamin F.P. Ivins
NAB
1771 N Street, N.W.
Washington, D.C. 20036

Stephen R. Effros
James H. Ewalt
Robert J. Ungar
Community Antenna Television
Assoc.
Box 1005
Fairfax, VA 22030

Stuart F. Feldstein
Fleischman & Walsh
1400 Sixteenth Street, N.W.
Washington, D.C. 20036

Robert S. Lemle
Senior Vice President and
General Counsel
Cablevision Systems Corp.
One Media Crossways
Woodbury, NY 11797

Howard J. Symons
Leslie B. Calandro
Mints, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004

Joseph R. Reifer
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006

Grier C. Raclin
Kevin S. DiLallo
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

John D. Pellegrin
A Kimberly Matthews
John D. Pellegrin, Chtd.
1140 Connecticut Avenue, N.W.
Suite 606
Washington, D.C. 20554

Martin R. Leader
Gregory L. Masters
Fisher, Wayland, Cooper
and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037

Paul J. Sinderbrand
Dawn G. Alexander
Sinderbrand & Alexander
888 Sixteenth Street, N.W.
Suite 610
Washington, D.C. 20006-4103

John F. Stewart, Jr.
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595

Russell J. Schwartz
Horack, Talley, Pharr & Lowndes
301 South College Street
Charlotte, NC 28202

James J. Popham
Vice President, General Counsel
Association of Independent
Television Stations, Inc.
1200 18th Street, N.W.
Suite 502
Washington, D.C. 20036

James L. Winston
Walter E. Diercks
Rubin, Winston, Diercks,
Harris & Cooke
1730 M Street, N.W.
Suite 412
Washington, D.C. 20036

William S. Reyner, Jr.
Jacqueline P. Cleary
Christopher P. Gilkerson
Hogan & Hartson
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Arthur H. Harding
Matthew D. Emmer
Fleischman & Walsh
1400 16th Street, N.W.
Washington, D.C. 20036

Dan J. Alpert
Moran Communications, Inc.
1250 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20036

Charles J. Sennet
Tribune Broadcasting Co.
435 North Michigan Avenue
Chicago, IL 60611

ITS, Inc. *
1919 M Street, N.W.
Room 246
Washington, D.C. 20554

Christopher J. Reynolds
P.O. Box 2809
Prince Frederick, MD 20678